

BOISE, TUESDAY, JANUARY 8, 2008, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33073

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
DAVID D. PURDUM,)
)
Defendant-Appellant.)
_____)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Oneida County. Hon. Don L. Harding, District Judge.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

David D. Purdum was on probation for a prior crime. As a condition of his probation, Purdum had agreed to submit to random drug tests “upon the request of the Court, his probation officer or any law enforcement official” and warrantless searches of his person or property “at the request of his probation officer.” A police officer familiar with Purdum and the condition of his probation saw Purdum driving by, and so decided to contact Purdum and ask him to submit to a drug test.

As the officer came to this decision, Purdum parked in his father’s driveway and exited his vehicle. He had taken several steps when he noticed the approaching patrol vehicle, and ran around to the back of the house and hid in a shed. The officer followed and ordered Purdum out of the shed. Purdum attempted to run again, but was apprehended and arrested for obstructing an officer. The officer searched Purdum’s pockets and discovered several lighters, and then searched Purdum’s vehicle, where he found drug contraband.

In the proceedings below, Purdum argued that the warrantless search of his vehicle was unconstitutional and moved for the suppression of this evidence. The district court denied his motion. He now appeals, arguing the search of his car was tainted by an unlawful seizure because the officer did not have authority to ask him to submit to a drug test when he did not have a reasonable basis to believe that Purdum was violating his probation or about to commit a crime. He also contends that he consented only to warrantless searches by probation officers, not

police officers, as a condition of his probation. The State argues that, regardless of any alleged illegality, the search of the vehicle was a lawful search incident to arrest.

BOISE, TUESDAY, JANUARY 8, 2008, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33003/33004

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
MARIANO PEREZ, JR.,)
)
Defendant-Appellant.)
_____)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Juneal C. Kerrick, District Judge.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Mariano Perez, Jr., appeals the district court's denial of his motion to suppress statements that Perez made to law enforcement officers and to a television reporter while he was in jail. He contends that the officers illegally continued to interrogate him after he invoked his Fifth Amendment rights to remain silent and to an attorney and that the television reporter who interviewed him was acting as an agent of the police. Perez also contends that the district court erred by imposing concurrent fixed life sentences for aggravated assault and aggravated battery on a police officer, with sentence enhancements for being a persistent violator of the law.

BOISE, TUESDAY, JANUARY 8, 2008, AT 1:30 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33978

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
MYRON DALE LOOMIS, JR.,)
)
Defendant-Appellant.)
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Valley County. Hon. Thomas F. Neville, District Judge.

Wilcox & Hallin, McCall, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

Myron Dale Loomis, Jr., was driving his dump truck in Valley County when he encountered Darrel Richard Kelley, his brother-in-law, who was having an affair with Loomis's wife. Kelley was servicing portable toilets and had just returned from attempting to service a toilet that was not where it belonged. Two individuals informed Kelley that Loomis had dumped the toilet a mile away. Admittedly angry, Kelley stopped his truck when he encountered Loomis traveling in the opposite direction. Kelley exited his vehicle. Kelley told Loomis to "Get out of the truck, asshole." Loomis pointed a revolver at Kelley, cocked it, and told him to get back. Kelley took one step back from the truck, placing himself several feet from Loomis's door. Kelley continued to yell at Loomis, taunting him that he didn't have the guts to shoot and calling him a chicken. Loomis fired a shot from his revolver into the pavement between Kelley's feet.

Loomis was charged with aggravated assault, Idaho Code §§ 18-901, 18-905. At the preliminary hearing the magistrate dismissed the case, finding that Loomis's actions were justified by self-defense, and therefore did not constitute a crime. The state appealed to the district court contending that it was held to an unreasonable burden of disproving self-defense beyond a reasonable doubt and claiming that the magistrate should not have considered evidence of self-defense at all. The district court ruled that evidence of self-defense can be considered at a preliminary hearing in order to determine whether the state has met its burden of showing probable cause to believe a crime was committed and the defendant committed it. The district court remanded the case back to the magistrate. Loomis appeals, raising the issue of whether the district court erred in remanding the case to the magistrate for a probable cause determination and without requiring the state to disprove self-defense.

BOISE, THURSDAY, JANUARY 10, 2008, AT 9:00 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33547

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
MIGUEL ORTIZ MORALES,)
)
Defendant-Appellant.)
_____)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

In July 2005, officers questioned Miguel Ortiz Morales at the hospital regarding injuries that his nephew, E.H., had suffered. E.H., a twenty-one-month-old child, was eventually transported from the Twin Falls area to Boise by life-flight where he was treated for significant injuries, which included acute subdural hematoma, retinal hemorrhaging in both eyes, bruises, fractures, and abrasions.

E.H. and his mother Patricia, Morales's sister from Mexico, had been living with Morales, his wife, and their children for over three months prior to the July injuries. Morales helped Patricia get a job and a car, and he provided transportation for her. Patricia would watch Morales's children while he and his wife were at work, and Morales and his wife would watch E.H. while Patricia was at work.

In addition to taking E.H. to the hospital in July, it was determined that Morales had also taken E.H. for treatment of a broken arm in April and a head injury in May. Morales, his wife, and Patricia told officers that all three of the hospital visits were the result of accidents and that E.H. was a very active baby. Although medical professionals believed that E.H.'s injuries were the result of abuse and could not have occurred accidentally, the state was unable to determine who actually abused E.H. Therefore, Morales, his wife, and Patricia were all charged with injury to a child. Morales was found guilty of felony injury to child.

On appeal, Morales argues that there was insufficient evidence to show that E.H. was in his “care or custody.” The state counters by asserting that the record contains substantial and competent evidence showing that E.H. was in Morales’s care.

BOISE, THURSDAY, JANUARY 10, 2008, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33534/33594

STEVEN JAMES COOK,)
)
Petitioner-Appellant,)
)
v.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bear Lake County. Hon. Lansing L. Haynes, District Judge.

Molly J. Huskey, State Appellate Public Defender; Erik R. Lehtinen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Ralph R. Blount, Deputy Attorney General, Boise, for respondent.

Steven James Cook entered guilty pleas to nine counts of grand theft by deception, admitting to stealing approximately \$1.4 million dollars from nine families through a fraudulent securities scheme. He was sentenced to a unified term of fourteen years, with five years determinate, for count I, followed by eight unified terms of eight years each, with three years determinate, for the remaining counts. All the sentences were to run consecutively to each other. No appeal was filed. Cook filed an Idaho Criminal Rule 35 motion for reduction of sentence, which was denied. Again, no appeal was pursued.

Cook filed a petition for post-conviction relief. The district court denied the state's motion to dismiss for untimeliness. The state then filed a motion for partial summary judgment, which the court granted on several other claims, including, relevant to this appeal, his allegations that counsel was ineffective for failing to file a motion to dismiss under double jeopardy or I.C. § 19-315 and failing to file a motion to disqualify the trial court judge on the basis of bias or prejudice. The district court agreed with Cook that counsel had been ineffective for not filing notices of appeal from the judgment of conviction and Rule 35 motion, but denied his other assertions. The court re-entered Cook's judgment of conviction to afford him the opportunity for direct appeal of his sentences and the denial of his Rule 35 motion. Cook appeals from the partial summary judgment granted in his post-conviction case and also initiates a direct appeal of the sentences imposed and denial of his Rule 35 motion.

BOISE, THURSDAY, JANUARY 10, 2008, AT 1:30 P.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33326

LINDA ELAINE SCHWARTZ,)
)
Petitioner-Appellant,)
)
v.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Oneida County. Hon. N. Randy Smith, District Judge.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

In 2001, Linda Elaine Schwartz pled guilty to second degree murder. The district court sentenced Schwartz to a unified term of life imprisonment, with a minimum period of confinement of fifteen years. Schwartz filed a pro se motion for reduction of sentence pursuant to I.C.R. 35, which the district court denied. Schwartz appealed, and this Court affirmed her sentence and the order denying her Rule 35 motion. A remittitur was issued on December 30, 2002.

On September 12, 2003, Schwartz wrote a letter to the district court. In response to Schwartz's letter, the district court appointed post-conviction counsel on October 8, 2003. On April 14, 2005, Schwartz, through counsel, filed a motion to extend the filing time for her application. The district court denied Schwartz's motion to extend. On April 26, 2006, Schwartz mailed a verified, pro se application for post-conviction relief and a motion requesting counsel to the county prosecutor's office. The application and motion requesting counsel were filed in the district court on May 12, 2006. The state filed a motion to dismiss Schwartz's application. The district court issued an order appointing Schwartz a different attorney from her originally-appointed counsel and a notice of intent to dismiss Schwartz's application. The district court's notice indicated that Schwartz's application was untimely and that the claims within the application failed to raise a genuine issue of material fact as to whether Schwartz was entitled to relief. With the assistance of her newly-appointed counsel, Schwartz filed a response which asserted that she was entitled to equitable tolling of the statute of limitation. Shortly

thereafter, the district court issued an order summarily dismissing Schwartz's application. In the order, the district court adopted the reasoning of the notice of intent to dismiss and also ruled that Schwartz was not entitled to equitable tolling. Schwartz appeals the dismissal of her application.